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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/965,098

09/26/2001

Richard C. Johnson

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EXAMINER

BADII, BEHRANG

ART UNIT

PAPER NUMBER

3694

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/965,098	<b>Applicant(s)</b> JOHNSON, RICHARD C.	
	<b>Examiner</b> BEHRANG BADII	<b>Art Unit</b> 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 3/19/08 have been fully considered but they are not persuasive. Boarman and Das et al. (USPAP 2002/0147675) fully and clearly discloses an auction that starts in the form a Dutch auction, i.e. bringing the price down until someone bids on the item and then taking all the bids and notifying the winner and the losers of the results and taking new bids within a predetermined time interval on the item for sale (Das et al.: p 53-54, 65 & 77) (Boarman: col.4, 29-67; col.5, 1-61; fig 3a).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The method claims 1-7 are rejected under 101 due to the following:

Based on Supreme Court precedent (Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876).) and recent Federal Circuit decisions, the Office's guidance is that a 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. (The Supreme Court recognizes that this test is not necessarily fixed or permanent and may evolve with technological advances. Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). If neither of these requirements is met by the claim, the method is not a patent eligible process under 101.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 11-24 rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's background, and further in view of Boarman et al, USP 6,609,112 and Das et al, USPAP 2002/0147675.

As per claims 1, 11 and 18, the applicant's background discloses a method/computer system/machine readable medium of conducting an auction for an item, comprising the steps of: setting a current asking price for the item; posting the current asking price and enabling bidding at the current asking price; periodically decreasing and posting the current asking price until a first bid is received from a first bidder at the then current asking price, and awarding the item to the first bidder at the then current asking price. The applicant's background does not disclose, after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after the first bid is received. Boarman discloses after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after the first bid is received (Das et al.: p 53-54, 65 & 77) (Boarman: col.4, 29-67; col.5, 1-61; fig 3a; abstract). It would have been obvious to modify the applicant's background to include after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after

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the first bid is received as that taught by Boarman in order to conduct proxy bidding within the context of Dutch auctions (col.1, 60-63).

As per claims 2, 12 and 19, the applicant's background further discloses setting a reserve price for the item, the reserve price being that price below which the item will not be sold, and stopping the auction if the periodic decreasing step decreases the current asking price to a level that is at or below the reserve price and no bid is received at the reserve price.

As per claims 3, 13 and 20, the applicant's background further discloses wherein the decreasing step is carried out at a predetermined regular time interval.

As per claims 4, 14 and 21, the applicant's background further discloses wherein the posting step includes a step of causing the current asking price to be displayed on at least one remote computing device coupled to a network.

As per claims 5, 15 and 22, the applicant's background further discloses wherein when the at least one additional bidder bids higher than the first bid, the method further comprises the steps of: accepting increasingly higher successive bids from at least one of the first bidder and the at least one additional bidder, and awarding the item to a highest bidder among the first bidder and the at least one additional bidder.

As per claims 6, 16 and 23, the applicant's background further discloses wherein the accepting step accepts each one of the increasingly higher successive bids if timely received.

As per claims 7, 17 and 24, the applicant's background further discloses wherein the item includes at least one of a contract, goods, a service, real estate and a legal right.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Behrang Badii whose telephone number is 571-272-6879. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

### **Any response to this action should be mailed to:**

Mail Stop Amendment  
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Alexandria, VA 22313-1450

**or faxed to (571)273-8300**

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Hand delivered responses should be brought to

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Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application  
or proceeding should be directed to the Technology Center 3600 Customer Service  
Office whose telephone number is **(571) 272-3600**.

Behrang Badii  
Patent Examiner  
Art Unit 3694

BB

/James P Trammell/  
Supervisory Patent Examiner, Art Unit 3694